IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR.JUSTICE S. TAMILVANAN

W.P.No.600 of 1996

P.L. Ramachandran .. Petitioner

vs.

1.Director of Settlement
Office of the Director of Settlement
Marina Beach Road
Ezhilagam, Madras 600 005.

2.The Settlement Officer
Office of Settlement
Tanjore.

3.The Assistant Settlement Officer
Opposite to Anna Bus Stand
Madurai.

4.A.L.A.R.V.S.M. Narayanan Chettiar

5.K. Premchandar Power Agent for
ALARUSM Narayana Chetiar. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the order passed by the Director of Settlement, Madras-5 dated 05.04.1995 in his Na.Ka.No.2401/95 (E2) and to quash the same and consequently direct the Respondent to issue patta to the actual tenant residing at Pasumpon Muthuramalinga Devar District, Karaikudi Circle, Amaravathi, Pudur Village in Survey No.82/1 (3.78) 82/3 (0.64) and 87/2 (1.36) of the total extent of 5.78 acres and to landless poor people in accordant with law.

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For petitioner : Mr. K. Balakrishnan
For respondents : Mrs. D. Geetha
Addl. Govt., Pleader for R1 to 3
Mr. ARL.Sundaresan,Sr.Counsel
for Mrs.AL. Gandhimathi for R4&5

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner by name P.L. Ramachandran, claiming himself to be the District Secretary, Communist Party of India, Pasumpon Muthuramalinga Devar District, filed this Public Interest Litigation, challenging the order dated 05.04.1995, passed by the Director of Settlement, Madras 600 005, issuing patta to one A.L.A.R.V.S.M. Narayanan Chettiar, the fourth respondent, through Power Agent K. Premchandar, the fifth respondent.

2. The case of the petitioner is briefly stated hereunder:

There are about thirty tenants, who are poor agricultural labourers, coolies, barbers and dhobies, having their residence in Survey No.82/1 of an extent of 3.78 acres, Survey No.82/3 of an extent of 0.64 acres and Survey No.87/2 of an extent of 1.36 acres in Amaravathi Pudur Village, Karaikudi Circle, Pasumpon Muthuramalinga Devar District. Without an enquiry as to who are in possession of the property and without any notification or publication on the issue of patta, the first respondent passed the impugned order. The act of issuing patta for the land of an extent of 5.78 acres to a person, who is not in possession and who is not a landless, but a Zamindar, is manifestly illegal and ultra vires. No opportunity was given to landless poor people and the first and third respondents acted in a hasty manner and the impugned order was passed in violation of all canons of law.

3. The first respondent filed a counter affidavit stating that one K. Prem Chander, Power Agent of A.L.A.R.V.S.M. Narayanan Chettiar applied for patta in respect of S.No.82/1 & 3 and 87/2 of Amaravathipudur Village of Karaikudi Taluk, Sivaganga District. The Assistant Settlement Officer, Madurai, after spot inspection, by proceedings dated 02.03.1995, recommended for grant of patta in respect of the above said survey numbers. The then Director of Survey and Settlement after conducting enquiry, condoned the delay in making representation by the individual as per G.O.Ms.No.1400 C.T. & R.E. Department, dated 21.11.1975, and later, granted patta in respect of the above survey numbers in his proceedings dated 05.04.1995. The first respondent had issued a notice to one K. Premchander, to appear in person on 23.03.1995 for personal enquiry with relevant records to substantiate his claim over the property in question.

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There is no provision in the relevant Rules for giving notice for a public enquiry. The third respondent, Assistant Settlement Officer, Madurai, sent his inspection notes only based on the local inspection and local enquiry. It was also left open to the occupants to place their case before the Director of Survey and Settlement, first respondent, before whom the enquiry was pending. There is no merit in the claim made by the petitioner.

4. Heard Mr. K. Balakrishnan, learned counsel for the petitioner, Mrs. D. Geetha, learned Additional Government Pleader for respondents 1 to 3 and Mr. AR.L. Sundaresan, learned senior counsel for respondents 4 and 5.

5. Before going into the relief claimed in the writ petition, it is useful to refer the suit filed by AL.AR.V.SM. Narayanan Chettiar, 4th respondent herein, on the file of Subordinate Judge, Devakottai, in O.S.No.6 of 1988. The State of Tamilnadu represented by the Collector of Pasumpon Muthuramalingam District at Sivaganga is the defendant. The suit properties are land and building in Survey Nos.82/1, 82/3 and 87/2. The relief prayed therein was for an injunction, restraining the defendant - State of Tamil Nadu acting through its officers from interfering in any manner with the plaintiff's possession and enjoyment of the suit properties. The suit was contested by both parties. On the side of the plaintiff, the plaintiff examined himself as PW.1 and marked documents Exs.A.1 to A.21 in support of his claim. On the side of the defendant, two witnesses were examined as DWs.1 and 2 and Exs.B.1 to B.11 were marked. The Commissioner's report and sketch were marked as Exs.C.1 and C.2. The issues framed in that suit are:

> "(i) Whether the suit properties belong to the plaintiff?
>
> (ii)Whether the plaintiff is in possession of the suit properties?"

On consideration of the oral and documentary evidence let in by both the parties as well as the provisions of Tamil Nadu Inam Abolition Act (Tamil Nadu Act 26/48), the learned Subordinate Judge, by judgment and decree dated 09.08.1989, decreed the suit in favour of the plaintiff as prayed for. It is not in dispute that the said decree had become final as the defendant-State did not prefer any appeal. As said earlier, the plaintiff therein is the 4th respondent in this writ petition.

6. The said 4th respondent, A.L.A.R.V.S.M. Narayanan Chettiar through his power agent K.Premchander, applied for patta in respect of lands in S.No.82/1 & 3 and 87/2 of Amaravathipudur Village of Karaikudi Taluk of Sivaganga District. Based on the application of the 4th respondent, the first respondent directed the third respondent to inspect and submit a report. Field Inspection report, dated 23.02.1995, of the Assistant Settlement Officer, third respondent herein, which is available in the

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typed set of papers filed by the learned Additional Government Pleader, shows that the third respondent inspected the land in question on 23.02.1995 in the presence of applicant (4th respondent herein) and the Village Administrative Officer concerned. In the report, it is noted that all the above mentioned Survey Numbers, viz., 82/1 & 3 and 87/2, before settlement were treated as jameen patta, but after enforcement of settlement, they were wrongly treated as Government Dry Poramboke. The report also refers that even before settlement under the Inam Abolition Act, the land in the above said three survey numbers was in possession of the applicant (4th respondent) who had constructed houses therein. The following Inspection report of the Assistant Settlement Officer is relevant.

"..... பிரஸ்தாப நிலங்கள் முற்றிலும் நான் பார்வையிட்ட போது கீழே குறிப்பிட்டுள்ளபடி அனுபவத்திலிருந்து வருகிறது.

ப,ல எண் 82.1 (3.78)

இந்த நிலத்திற்கு வடக்கே, ராமேஸ்வரம் சென்னை சாஸ்வத ரயில்வே இருப்ப,ப்பாதை செல்கிறது. கிழக்கேய,ம், தெற்கேய,ம் வீதியாக உள்ளது. மேற்கே, காரைக்குடி தேவகோட்டை ரோடு செல்கிறது.

இந்த நிலத்தைச் சுற்றிலும் காம்பவ,ண்டு சுவர் கட்டப்பட்டதில் வடப,றமும், கிழக்கேய,ம், மேற்கேய,ம், சுவர் இடிந்துள்ளதால் கல்கால் ஊன்றி முள் கம்பி கட்டி வேலி போடப்பட்டுள்ளது. இந்த நிலத்தின் நடுவே ஒரு தார்சு கட்டட வீடு உள்ளது. பாழடைந்த வட்டக்கிணறு உள்ளது. முதிர்ந்த வயதான மரங்கள் நிற்கின்றன. தார்சு கட்டடத்தில் காரைக்குடி அஞ்சல் நிலையம் வாடகைக்கு விடப்பட்டு நடந்து வருகிறது. வடக்கே ஒரு கூரை கொட்டகை, தெற்கே வீடு கட்டி வாடகைக்கு விடப்பட்டுள்ளது. மேற்கே கடைகள் கட்டி வாடகைக்கு விடப்பட்டுள்ளது. இந்தக் கடைகள் வீடுகள் பலகாலமாக இருந்து வருவதாகத் தெரிகிறது.

ப,ல எண்.82/3 (0.64)

இந்த நிலத்தில் வீடு கட்டி வாடகைக்கு விடப்பட்டு வருவதாகத் தெரிகிறது. மேலும் ஒரு வட்டக்கிணறு உள்ளது. வீடுகள் யாவ,ம் பல ஆண்டுகளாக இருந்து வருவதாகத் தெரிகிறது.

ப,ல எண்.87/2 (1.64)

இந்த நிலத்தில் வீடுகள் கட்டிய,ம், கடைகள் கட்டிய,ம் வாடகைக்கு விடப்பட்டு வருவதாகத் தெரிகிறது. சுற்றிலும் காம்பவ,ண்ட் சுவர் கட்டி இடிந்து கிடக்கிறது. இரண்டு வட்டக் கிணறு உள்ளது. வீடுகள் யாவ,ம் கிணறும், பல ஆண்டுகளுக்கு முன்பிருந்தே இருந்து வருவதாகத் தெரிகிறது.

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மேற்கண்ட மூன்று நிலங்களிலும், விவசாய மல்லாதவாறு வீடுகள் கட்டி அனுபவித்து வருகிறார்கள்.

இந்த மூன்று நிலங்களும் பல ஆண்டுகளுக்கு முன்பிருந்தே பட்டா பஞ்சை (ரயத்துவாரி) யாக இருந்து விவசாயமில்லாத மனையிடமாக அனுபவித்து வந்ததாக தெரிவதால் இந்த நிலங்கள் பல எண்கள் 82/1 (3.78), 82/.3 (0.64), 87/2 (1.36) ஆகியவைகளை ஜமீன் ஒழிப்பு, சட்டம் 26/48, செக்சன் 19 பிரிவின்படி உரிய விதிமுறைகளை அனுசரித்து ரயத்துவாரி பட்டா வழங்கலாம்.

ஒம். .....

உதவிநிலவரித்திட்ட அலுவலர்,

மதுரை 20."

7. The above report was forwarded to the first respondent by letter dated 02.03.1995. The said report was relied on by the first respondent while passing the impugned order on 05.04.1995. A perusal of the inspection report of the Assistant Settlement Officer shows that he personally verified the land in the survey numbers and noted the existence of houses and also some shops let out to various persons. He also characterised the land as dry non-agricultural land and recorded that the same is being used as house sites and recommended for grant of riotwari patta as per Section 19 of Inam Abolition Act.

8. Though Mr. K. Balakrishnan, learned counsel for the petitioner vehemently contended that respondents 1 to 3 misused their power and erroneously granted patta in favour of the 4th respondent, as said earlier, the 4th respondent obtained a decree against the State in respect of the very same survey numbers as early as on 09.08.1989. As we have already noticed, there is nothing on record about filing of appeal against the said judgment and decree. Apart from this, on receipt of application from the power of attorney of 4th respondent, the first respondent directed the Assistant Settlement Officer to submit a report with reference to the claim of the applicant, and the third respondent personally inspected all the three survey numbers and noted the existence of damaged buildings surrounded by compound wall. Had the tenants been in occupation, they would have raised an objection or at least informed of their possession and occupation to the Assistant Settlement Officer, when he personally inspected the survey numbers in question. If they are really interested, they would have sent representation either to the Settlement Officer or to the higher official, i.e., Director of Settlement, Chennai, highlighting their grievance or entitlement. Admittedly, no such recourse was taken either by the petitioner or by persons alleged to be in occupation or in possession of the land in question. Learned Additional Government Pleader also placed before us the Inspection report, dated 23.02.1995, of the Assistant Settlement Officer and his report, dated 02.03.1995, to the Director of Settlement as well as the impugned order, dated 05.04.1995, granting patta in favour of 4th respondent herein.

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9. On going through all the materials including the judgment and decree, dated 09.08.1989, made in O.S.No.6 of 1988, on the file of Sub Court, Devakottai, and in view of the factual conclusion arrived at by the Assistant Settlement Officer based on his inspection that there existed damaged houses surrounded by compound wall and also of the fact of condoning the delay by the authority concerned in filing the application, we are unable to accept the stand taken by the petitioner. On the other hand, we are in agreement with the decision arrived at by the first respondent. Consequently, the writ petition fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.Director of Settlement
Office of the Director of Settlement
Marina Beach Road
Ezhilagam, Madras 600 005.

2.The Settlement Officer
Office of Settlement
Tanjore.

3.The Assistant Settlement Officer
Opposite to Anna Bus Stand
Madurai.

1 cc To Mr.K.Balakrishnan, Advocate, SR.47372.
1 cc To The Government Pleader, SR.47493.

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